

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>JEAN JOCELYN MERILIEN,</b>	<b>:</b>	<b>CIVIL ACTION NO.</b>
<b>GDC ID # 1048466,</b>	<b>:</b>	<b>1:12-CV-00750-RLV-AJB</b>
<b>Petitioner,</b>	<b>:</b>	
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>STATE BAR OF GEORGIA</b>	<b>:</b>	<b>PRISONER MANDAMUS</b>
<b>DISCIPLINARY BOARD,</b>	<b>:</b>	<b>28 U.S.C. § 1361</b>
<b>PRENTISS Q. YANCEY, JR.,</b>	<b>:</b>	
<b>Respondents.</b>	<b>:</b>	

**ORDER FOR SERVICE OF REPORT AND  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Attached is the Report and Recommendation of the United States Magistrate Judge made in accordance with 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), and this Court's Local Rules 72.1 and 58.1. Let the same be filed and a copy, with a copy of this order, be served upon counsel for the parties or directly upon any unrepresented parties.

Each party may file written objections, if any, to the Report and Recommendation within fourteen (14) days of receipt of this Order. Fed. R. Civ. P. 72(b). Should objections be filed, they shall specify with particularity the alleged error(s) made (including reference by page number to the transcript if applicable) and shall be served upon the opposing party. The party filing objections will be responsible

for obtaining and filing the transcript of any evidentiary hearing for review by the District Court. If no objections are filed, the Report and Recommendation may be adopted as the opinion and order of the District Court and any appellate review of factual findings will be limited to plain error review. *United States v. Slay*, 714 F.2d 1093, 1095 (11<sup>th</sup> Cir. 1983).

The Clerk is directed to submit the Report and Recommendation with objections, if any, to the District Court after expiration of the above time period.

**IT IS SO ORDERED and DIRECTED**, this 16th day of April, 2012.



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**ALAN J. BAVERMAN**  
**UNITED STATES MAGISTRATE JUDGE**

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<b>PRENTISS Q. YANCEY, JR.,</b>	<b>:</b>	
<b>Respondents.</b>	<b>:</b>	

**UNITED STATES MAGISTRATE JUDGE'S  
FINAL REPORT AND RECOMMENDATION**

In this mandamus action, Petitioner, a Georgia prisoner, seeks State Bar records and other documents that he claims will prove that Respondent Yancey defrauded him in the amount of \$60,000. [Doc. 1]. Petitioner requests leave to proceed *in forma pauperis*. [Doc. 2]. This is a prisoner civil action. *See* 28 U.S.C. § 1361 (granting federal district courts limited “original jurisdiction of any *civil action in the nature of mandamus*”) (emphasis added). As such, the provisions of 28 U.S.C. § 1915, including § 1915(g), apply.

Section 1915(g) provides that a prisoner may not bring a civil action in federal court *in forma pauperis* “if [he] has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States

that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The Court takes judicial notice that Petitioner has at least three prior frivolity dismissals. *See Merilien v. Read*, 1:08-CV-02677-CC (N.D. Ga. Aug. 28, 2008). Furthermore, there is no indication in Petitioner’s pleadings that he is in imminent danger of serious physical injury.

In these circumstances, “the proper procedure is . . . to dismiss the complaint without prejudice.” *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11<sup>th</sup> Cir. 2002). “The prisoner cannot simply pay the filing fee after being denied *in forma pauperis* status. He must pay the filing fee at the time he *initiates* the suit.” *Id.*

Therefore, **IT IS RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under 28 U.S.C. § 1915(g).

The Clerk is **DIRECTED** to terminate the referral to the Magistrate Judge.

**IT IS SO RECOMMENDED and DIRECTED**, this 16<sup>th</sup> day of April, 2012.



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**ALAN J. BAVERMAN**  
**UNITED STATES MAGISTRATE JUDGE**